TOKO PALAYAKAT JAMAL (M) SDN BHD

v.

SOON SENG COMPANY SDN BHD

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
ABDUL KADIR SULAIMAN JCA
ABDUL AZIZ MOHAMAD JCA
[CIVIL APPEAL NO: W-02-850-1998]
13 APRIL 2004

LAND LAW: *Caveat - Application for removal - Whether applicant/plaintiff an aggrieved person - Whether defendant had shown a caveatable interest in property - National Land Code, s. 327(1)*

CONTRACT: *Repudiation - Legal position of parties where promisee does not accept repudiation - Whether contract still kept alive - Whether promisor could still complete contract notwithstanding previous repudiation*

This was the appellant's appeal against the decision of the learned judge allowing the respondent's application for the removal of a private caveat lodged by the appellant on a piece of land ('the subject property'). It was not disputed that the respondent was not the proprietor of the subject property but had an ongoing civil suit ('the suit') with the vendor thereof under a sale and purchase agreement ('the S & P '). The suit was commenced by the vendor for specific performance of the S & P whilst the respondent counter claimed for rescission thereof and refund of the deposit paid. Later the respondent changed its stand and decided to complete the S & P by tendering payment of the balance of the purchase price to the vendor. The vendor however refused to sell the subject property and returned the balance of the purchase price tendered. The respondent then amended its defence and counterclaim to one of specific performance of the S & P whilst the vendor withdrew his claim for specific performance and opposed the respondent's amended counterclaim for specific performance.

The appellant submitted that the respondent was not an aggrieved person under s. 327 of the National Land Code ('NLC'). This was because at the time the appellant lodged its caveat the respondent's case with the court was for rescission of the S & P. Further, the respondent had approbated and reprobated in that it first refused to purchase the subject property and then purported to purchase it almost 12 years after the S & P was concluded.

Held (dismissing the appeal)
Per Abdul Kadir Sulaiman JCA:

[1] What was relevant was the status of the respondent as on the date it filed its application for the removal of the said caveat. As at that date the respondent was asserting its interest over the land by counter claiming for specific performance against the vendor. Whether it was going to succeed in the suit or otherwise was a different matter altogether. But on the pleading it had built up a basis for its equitable interest over the subject property. (p 39 d-e)

[2] By the amendment to the respondent's counterclaim, the original counterclaim became irrelevant for the court hearing the suit to consider. The suit would be decided on the basis of the amended counterclaim. (p 39 g)

[3] The respondent had executed the S & P for the purchase of the subject property and had paid a sum of RM115,000 being deposit and part payment of the purchase price of RM1,150,000. Being an administered property, appropriate leave of the court for its disposal to the respondent had been duly obtained. An attempt made by the respondent to pay off the balance of the purchase price of the subject property was a failure. On account of the dispute that arose over the S & P between the vendor and the respondent, the matter was before the court yet to be disposed of. Hence, the evidence showed that the respondent was an aggrieved person within the meaning of s. 327 NLC. (p 40 d-f)

[4] The appellant's caveat was placed against the subject property well after the respondent and the vendor had their dispute first registered in court. There was nothing in the evidence to suggest that it likewise had a dispute with the vendor or the respondent pending in court. The learned judge was right in holding that on the facts the appellant had no caveatable interest over the land. Therefore, the learned judge rightly ordered it to be removed without the necessity of going any further into the issues of whether there was a serious question to be tried and on the balance of convenience. In any event, the appellant had no trial of any action pending in court apart from wanting to leave the caveat on the subject property pending the completion of the transfer from the vendor to it over its intention to purchase the subject property as stated in its Form 19B. (pp 40 g-h & 42 a-b)

Per Abdul Aziz Mohamad JCA

[1] The vendor did not accept the respondent's earlier repudiation of the S & P. On the contrary, he had sued for specific performance of it. According to Cockburn CJ in *Frost v. Knight*, the promisee (the vendor) "keeps the contract alive for the benefit of the other party as well as his own; he … enables the other party … to complete the contract if so advised notwithstanding his previous repudiation of it …". The respondent's repudiation of the S & P did not disable it from changing its mind and completing the S & P. Although 12 years had passed since the signing thereof, when the respondent tendered the balance of the purchase price, the vendor was still on record as claiming for specific performance. But the vendor refused to accept the payment and this constrained the respondent to amend its counterclaim from one of rescission and refund of the deposit to one of specific performance. So there would be a serious question to be tried on the respondent's counterclaim as to whether the vendor was right in refusing to accept payment of the balance of the purchase price. (pp 42 f-h & 43 a)

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan perayu terhadap keputusan yang arif hakim membenarkan permohonan responden untuk mengeluarkan kaveat persendirian yang dimasukkan perayu ke atas sebidang tanah ('tanah berkenaan'). Tidak dinafikan bahawa responden bukanlah pemilik tanah berkenaan tetapi hanya terlibat dalam satu guaman sivil dengan penjual ('guaman') di bawah satu perjanjian jual beli ('PJB'). Guaman telah dimulakan oleh penjual bagi mendapat pelaksanaan spesifik PJB sementara responden menuntut balas untuk pembatalannya serta untuk pemulangan deposit yang dibayar. Responden kemudian menukar pendirian dan mengambil keputusan untuk menyempurnakan PJB dengan membayar baki harga belian kepada penjual. Penjual bagaimanapun enggan menjual tanah berkenaan dan dengan itu mengembalikan baki wang belian yang dibayar responden. Berikutnya, responden meminda pembelaan dan tuntutan balasnya dengan memohon pelaksanaan spesifik PJB, sementara penjual pula menarik balik tuntutan pelaksanaan spesifiknya dan bertindak menentang tuntutan balas terpinda responden untuk pelaksanaan spesifik.

Perayu berhujah bahawa responden bukanlah orang yang terkilan di bawah s. 327 Kanun Tanah Negara ('KTN'). Ini kerana, sewaktu perayu memasukkan kaveatnya kes responden di mahkamah adalah untuk pembatalan PJB. Lagipun, responden telah mengesah dan menolak dalam ertikata ia mulanya enggan membeli harta berkenaan tetapi kemudian bertindak untuk membelinya setelah hampir 12 tahun PJB dimeterai.

Diputuskan (menolak rayuan)
Oleh Abdul Kadir Sulaiman HMR:

[1] Apa yang relevan adalah status responden sewaktu ia memfailkan permohonan untuk mengeluarkan kaveat. Pada tarikh tersebut responden telah menuntut kepentingannya terhadap tanah melalui tuntutan balas terhadap penjual untuk pelaksanaan spesifik. Sama ada ia akan berjaya dalam guamannya itu ataupun tidak adalah satu perkara lain. Tetapi, di atas pliding, responden telah membentuk asas bagi suatu hak ekuiti terhadap tanah berkenaan.

[2] Melalui pindaan kepada tuntutan balas responden, tuntutan balas asal sudah menjadi tidak relevan untuk dipertimbangkan oleh mahkamah yang mendengar guaman. Guaman harus diputuskan dengan berdasarkan kepada tuntutan balas terpinda.

[3] Responden telah memeterai PJB bagi membeli tanah berkenaan dan telah membayar sejumlah RM115,000 sebagai deposit dan bayaran sebahagian terhadap harga belian sebanyak RM1,150,000. Oleh kerana tanah adalah harta yang ditadbir, kebenaran mahkamah untuk melupuskan tanah kepada responden telah pun diperolehi. Cubaan yang dibuat oleh responden untuk membayar baki harga belian tanah berkenaan berakhir dengan kegagalan. Berkaitan perselisihan yang berbangkit berkenaan PJB di antara penjual dengan responden, perkara tersebut sudah pun berada di mahkamah dan menunggu perbicaraan. Keterangan dengan itu menunjukkan bahawa responden adalah orang yang terkilan dalam ertikata s. 327 KTN.

[4] Perayu mengemukakan kaveatnya terhadap tanah berkenaan lama selepas responden dan penjual mendaftarkan perselisihan mereka di mahkamah. Keterangan juga tidak menunjukkan bahawa perayu mempunyai pertelingkahan dengan penjual ataupun responden yang sedang menunggu perbicaraan di mahkamah. Yang arif hakim betul bilamana memutuskan bahawa berdasarkan fakta perayu tidak mempunyai apa-apa kepentingan di atas tanah yang boleh dikaveatkan. Oleh itu, yang arif hakim juga betul apabila memerintahkan supaya kaveat dikeluarkan tanpa perlu pergi jauh kepada persoalan sama ada terdapat isu yang perlu dibicarakan mahu pun kepada isu imbangan keselesaan. Apa pun, perayu tidak menunggu sebarang perbicaraan di mahkamah selain dari mengkehendaki supaya kaveat dikekalkan sementara menunggu penyempurnaan pindahmilik dari penjual kepadanya berkaitan hasratnya untuk membeli tanah berkenaan sepertimana yang tercatit dalam Borang 19Bnya.

Oleh Abdul Aziz Mohamad HMR

[1] Penjual tidak menerima pembatalan terdahulu PJB oleh responden. Beliau sebaliknya telah menuntut pelaksanaan spesifik baginya. Menurut Cockburn CJ dalam *Frost v. Knight*, penerima janji (penjual) terus menegakkan kontrak untuk manfaat pihak lain dan juga dirinya sendiri; dia membolehkan pihak yang lain untuk menyempurnakan kontrak jika dinasihati begitu walaupun terdapat pembatalannya yang terdahulu. Pembatalan PJB oleh responden tidak menghalangnya dari menukar fikiran dan menyempurnakan PJB. Walaupun 12 tahun telah berlalu selepas pemeteraian, semasa responden mengemukakan baki harga belian, penjual tercatit pada rekod sebagai masih lagi menuntut pelaksanaan spesifik. Tetapi penjual telah enggan untuk menerima bayaran dan ini memaksa responden untuk meminda tuntutan balasnya dari pembatalan dan pembayaran balik deposit kepada pelaksanaan spesifik. Oleh itu, terdapat persoalan serius untuk dibicarakan pada tuntutan balas responden berkaitan sama ada penjual bertindak betul apabila enggan menerima baki harga belian.

Case(s) referred to:
Chin Kim & Anor v. Loh Boon Siew [1970] 1 MLJ 197 ***(refd)***
Eng Mee Yong & Ors v. V Letchumanan [1979] 2 MLJ 212 ***(refd)***
Frost v. Knight LR 7 Ex 111 ***(refd)***
Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 2 CLJ 713 CA ***(refd)***
Murugappa Chettiar Lakshmanan v. Lee Teck Mook [1995] 1 CLJ 545 CA ***(refd)***

Legislation referred to:
National Land Code, s. 327(1)

For the appellant - S Nantha Balan (Gregory Ling); M/s Zul Rafique & Partners; M/s Albar Zulkifly & Yap
For the respondent - Ahmad Moosdeen (V Balasingam); M/s Balasingam & Co

[Appeal from High Court, Kuala Lumpur; Originating Summons No: S2-24-869-1997]

Reported by Usha Thiagarajah

JUDGMENT

Abdul Kadir Sulaiman JCA:
By an originating summons of 24 October 1997, the respondent in the High Court, applied for the removal of a private caveat registered on 20 September 1994 lodged by the appellant on land held under CT 14860 Lot No. 75, Section 6, Kuala Lumpur (the subject property).

The application was heard by the learned judge and by an Order dated 17 November 1998, he allowed the application in terms. Hence, the said private caveat of the appellant was ordered to be removed from the register of title to the subject property and the appellant was ordered to pay damages to the respondent to be assessed and costs. The appellant being unhappy with the said decision filed an appeal here. On 12 March 2003 after hearing parties, we dismissed the appeal with costs. We now provide the reasons.

In *Eng Mee Yong & Ors v. V. Letchumanan* [1979] 2 MLJ 212 Lord Diplock, delivering the judgment of the Privy Council, has this to say at p. 215:

> This is the nature of the onus that lies upon the caveator in an application by the caveatee under section 327 for removal of a caveat: he must first satisfy the court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

However, in the instant appeal, it must be made clear from the outset, that the respondent is not a caveatee as such because the subject property is not registered in its name to make it the proprietor of same. The proprietor of the subject property is one K. Abdul Rahim who died intestate on 25 March 1977. On 12 April 1983 the Letter of Administration in respect of the subject property was granted to Abdul Rahim @ Packeer Mohamed bin M. Esmailsha, the lawful Attorney of Thajudeen s/o K. Abdul Rahim, the lawful son. The respondent asserts its interest in the said property purportedly based on a sale and purchase agreement of 28 December 1983 to purchase the subject property from the administrator of the estate.

As between the vendor and the respondent a dispute arose over the said sale and purchase agreement resulting in the vendor filing civil suit no. S6-22-162-87 in the Kuala Lumpur High Court. The vendor sued for specific performance of the said agreement. The respondent in the first instant, counterclaimed for a rescission of the agreement and for a refund of the deposit. Later, the respondent decided to complete the sale and purchase of the subject property by tendering payment of the balance of the purchase price to the vendor vide its solicitor's letter of 24 July 1996. The letter intimated that the respondent would discontinue its defence and counterclaim for rescission and for the refund of the money in the suit. The vendor refused to sell the subject property by returning the balance of the purchase price tendered. Upon application, the respondent amended its defence and counterclaim to one of specific performance

on 13 September 1997. The vendor withdrew its claim for specific performance of the said agreement and is opposing the respondent's amended counterclaim for specific performance.

This fact is of importance in the light of what Lord Diplock said earlier in the case cited on the same page as follows:

> Whereas the procedure under section 326 for obtaining the removal of a caveat is available only to the caveatee, the procedure for applying directly to the court for an order of removal is available not only to a caveatee but also to any other person aggrieved by the existence of the caveat – typically a purchaser to whom the registered proprietor has contracted to sell the land but the sale has not yet been completed by a proper instrument of transfer duly registered. In their Lordships' view a distinction must be drawn between cases where the applicant is a registered proprietor of the land (ie, the caveatee) and cases where the applicant is some other person who claims a right to an interest in it. In the former case the caveatee can rely upon his registered title as *prima facie* evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so. So where, as in the instant case, the only parties to an application under section 327 are caveatee and caveator there is no difference between what the caveator must establish to obtain an extension of his caveat under section 326 and what he must establish to defeat the caveatee's application for removal of the caveat under section 327.
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> It is otherwise when the applicant under section 327 is someone other than the caveatee. He has no registered title to rely upon as *prima facie* evidence of his interest in the land. It is for him to begin by satisfying the court that there are sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat.

Hence, the respondent in the present appeal placing itself in the position of not being a registered proprietor of the subject property, in order to succeed in its application for the removal of the caveat of the appellant placed upon the subject property, must begin by satisfying the court that it is a person aggrieved by the existence of such caveat on the subject property as so required by s. 327(1) of the NLC. Now, only after having satisfied the court that it is an aggrieved party over the placement of the caveat on the subject land, the onus would shift on the caveator, who is the appellant in this case, who must next satisfy the court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience it would be better

to maintain the *status quo* ie, its caveat should remain on the land until the trial of the action. In other words, it must show that it has an interest in the subject property capable of being protected by a private caveat and that it has an action relating thereto pending disposal before the court. It is not sufficient merely to lodge a caveat on the subject land and do nothing about it.

Before us, the learned counsel for the appellant submitted that the respondent is not an aggrieved person within the context of s. 327 of the NLC because at the time the appellant lodged its caveat on 17 September 1994, the respondent's case with the court was over rescission of the agreement with the vendor with the claim for the refund of the deposit paid. The amendment of the counterclaim for specific performance was only done on 13 September 1997. Therefore, the respondent cannot be considered as an aggrieved person over the existence of the appellant's caveat on the subject property as it failed to show a legal right or interest capable of being adversely affected by the entry of the caveat by the appellant. We do not see any merit in this line of submission because what is relevant is the status of the respondent as on the date it filed its application for the removal of the said caveat of the appellant. The date was 24 October 1997 which date was after the amendment of its counterclaim to one for specific performance of the agreement against the vendor which was on 13 September 1997. As of 24 October 1997 the respondent was asserting its interest over the subject property by counterclaiming for specific performance against the vendor in the suit before the court. Whether it is going to succeed in the suit or otherwise is a different matter altogether. But on the pleading it has built up a basis for its equitable interest over the subject property.

In further showing that the respondent is not an aggrieved person, the learned counsel further submitted that by changing the stand in its counterclaim against the vendor in the suit, the respondent had approbated and reprobated in that it first refused to purchase the subject property and sought refund of the deposit. Then it purported to proceed to purchase the said property and tendered the balance of the purchase price, almost 12 years after the agreement was entered into, which was rightly rejected by the vendor. For the same reason we see no merit in the contention because by the amendment to its counterclaim the original counterclaim becomes irrelevant for the court hearing the suit to consider. The suit will be decided on the basis of the amended counterclaim.

The learned judge in the court below in dealing with the application of the respondent mentioned earlier, clearly and rightly identified the issues involved. At p. 20 of the Record of Appeal, his judgment states:

> In respect of section 327(1) there are two issues to be considered, namely, (1) whether the plaintiff is an aggrieved person under section 327(1) of the NLC to entitle him to apply to remove the caveat, and (2) whether the defendant has shown a caveatable interest in the property.

The learned judge in identifying the two respective issues above must have been fully aware of the guideline given by Lord Diplock in *Eng Mee Yong (supra)* bearing in mind the position of the respondent *viz a viz* the subject property. On the first issue, the learned judge found on the evidence before him that the respondent is a person aggrieved under s. 327(1) of the NLC. He made a finding of fact as to the legal relationship between the vendor of the subject property and the respondent. Going through the records before us, we found that he has not erred in any way in so holding as to enable us to interfere with such a finding. On the evidence, we are satisfied ourselves that indeed the respondent is an aggrieved person within the context of s. 327(1) of the NLC to enable him to file this application for the removal of the appellant's caveat over the subject land. The respondent had on 28 December 1983 executed a sale and purchase agreement for the purchase of the subject property and had paid a sum of RM115,000 being deposit and part payment of the purchase price of RM1,150,000. Being an administered property, appropriate leave of the court for its disposal to the respondent had been duly obtained on 6 February 1985. An attempt made by the respondent to pay off the balance of the purchase price of the subject property was a failure. On account of the dispute which arose over the sale and purchase agreement between the vendor and the respondent, the matter is before the court yet to be disposed of. Hence, from the evidence in support of the application for the removal of the appellant's caveat we are in total agreement with the learned judge that the respondent has shown to the court's satisfaction that it is an aggrieved person within the meaning of s. 327 of the NLC.

Once the respondent satisfies the court that it is an aggrieved person, the onus shifts to the appellant to show that it has a caveatable interest in the said property to be protected.

The appellant's caveat was placed against the said property only on 17 September 1994 well after the respondent and the vendor had their dispute first registered in court which dispute ultimately resulting in the court having to decide on the respondent's amended counterclaim mentioned earlier with the vendor opposing it. But as for the appellant there was nothing in the evidence to suggest that it likewise is having its dispute with the vendor or the respondent pending in court such that, if its caveatable interest is shown, the balance of convenience, or more appropriately, the balance of justice, lies in favour of its caveat remaining on the register pending the disposal of its suit.

In his submission before us, the learned counsel relied on *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 2 CLJ 713 in support of his contention that the appellant here has established that it has a caveatable interest over the subject property which entitles it to lodge the caveat. In *Luggage Distributors*, Gopal Sri Ram said at p. 728:

> In my judgment, there are three stages through which an inquiry of this nature must go. The first stage is the examination of the grounds expressed in the application for the caveat. If it appears that the grounds stated therein are insufficient in law to support a caveat, then cadit quaestio, and the caveat must be removed without the necessity of going any further.

On this issue, the learned judge having considered, among others, *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 2 CLJ 713 and *Murugappa Chettiar Lakshmanan v. Lee Teck Mook* [1995] 1 CLJ 545 (both are decisions of this court), has this to say:

> Considering the facts of the case before me, the defendant's Form 19B states in effect that the defendant purchased the said property from the administrator and paid RM55,000.00. That is all. The affidavit in reply opposing the application merely says:
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> > Since the Defendant was in possession by reason of the matters abovestated, it entered into negotiations and concluded the Sale and Purchase Agreement on terms and conditions. The contents of the agreement including the purchase price and terms etc are matters between the Vendor and the Purchaser and need not be disclosed to third parties including the Plaintiff.
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> It is obvious that the defendant had deliberately set out not to reveal the terms and/or the purchase price of the said property and whether there exists any oral or written agreement. He merely states that he has paid $55,000.00 and there is no evidence what the balance of the purchase price is. As said by Mokhtar Sidin JCA in *Wu Shu Chen* this Court is posed with the question whether the defendant has indeed something to hide. Was there indeed an agreement? Or if there indeed was a written agreement did it contain anything that would vitiate the agreement thus clearly showing a non-caveatable interest. On the other hand, no satisfactory explanation has been given why the balance of the purchase price has not been stated. Or is this Court to assume that the total purchase price was only RM55,000.00. If this be the case then surely something is amiss. Why is the administrator rejecting a sale that would bring in RM1,150,000 and proceeding to enforce a sale that would give the beneficiaries only RM55,000.00. The caveatable interest of the defendant is clearly suspect and in my view the defendant has failed miserably the "meticulous scrutiny" test propounded by the Court of Appeal in *Luggage Distributors.*

We cannot agree more with the learned judge on the issue of caveatable interest over the subject property. The learned judge was right in holding that on the facts the appellant had no caveatable interest over the subject land. Applying the principle laid down in *Luggage Distributors, supra,* to the facts we are satisfied that the grounds put forward by the appellant are insufficient in law to support a caveat. As such it was rightly ordered to be removed without the necessity for the learned judge to go any further on the issue of a serious question to be tried and on the balance of convenience. In any event as stated earlier, the appellant has no trial of any action pending in court apart from wanting to leave the caveat on the subject property pending the completion of the transfer from the vendor to it over its intention to purchase the subject property as so stated in its Form 19B.

My learned brother Mokhtar bin Sidin JCA and Abdul Aziz bin Mohamad JCA have read this judgment in draft and stated that they concurred with the reasoning and the conclusion.

For the above reasons, the appeal of the appellant was accordingly dismissed with costs.

Abdul Aziz Mohamad JCA:

While concurring with the grounds of judgment prepared by my learned brother Abdul Kadir Sulaiman JCA, there is something that I wish to say in addition to all that is said there. It relates to my learned brother's statement at the end of para. 8 as to whether the respondents will succeed in their counterclaim for specific performance by the vendor, when it is seen against the fact that at first the respondents repudiated the agreement with the vendor by refusing to pay the balance of the purchase price. On his part, the vendor did not act to accept the repudiation by putting an end to the agreement. On the contrary, he refused to accept the repudiation and sued for specific performance of the agreement. According to the Federal Court in *Chin Kim & Anor v. Loh Boon Siew* [1970] 1 MLJ 197, at p. 198 E (right), the legal position of the parties where the promisee does not accept the repudiation by putting an end to the contract is as stated by Cockburn CJ in *Frost v. Knigh*t LR 7 Ex 111, 112. As far as the position of the respondents in this case is concerned, according to Cockburn CJ the promisee – in this case the vendor – "keeps the contract alive for the benefit of the other party as well as his own; he … enables the other party … to complete the contract, if so advised, notwithstanding his previous repudiation of it …". So the respondents' repudiation of the agreement in this case did not disable them from changing their mind and completing the agreement. Although twelve years had passed since the signing of the agreement on 28 December 1983 when the respondents tendered the balance of the

purchase price on 24 July 1996, it has to be borne in mind that at that date the vendor was still on record in their action as claiming for specific performance, that is to say, for the very thing that the respondents did on that date. But the vendor refused to accept the payment, and this constrained the respondents to amend their counterclaim from one for rescission and refund of deposit to one for specific performance. So there would be a serious question to be tried on the respondents' counterclaim whether the vendor was right in refusing to accept payment of the balance of the purchase price.